

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB -5 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2009-0268-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
ADAM BUSTOS RAMOS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054345

Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

Robert J. Hirsh, Pima County Public Defender  
By Kristine Maish

Tucson  
Attorneys for Petitioner

H O W A R D, Chief Judge.

¶1 In this petition for review, Adam Ramos challenges the trial court's summary dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We review the court's ruling for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Finding none, we deny relief.

¶2 After a jury trial in his absence, Ramos was found guilty of aggravated driving under the influence of an intoxicant while his license was suspended or revoked or in violation of a restriction and aggravated driving with an alcohol concentration of .08 or more while his license was suspended or revoked or in violation of a restriction. Ramos was later arrested and filed a motion for new trial in which he claimed he had been involuntarily absent from trial because he is a United States citizen and had been wrongfully deported. He offered no documentation to support his claim, however, and the trial court found it was not credible. The court denied the motion for new trial and, after finding Ramos had two historical prior felony convictions, sentenced him to concurrent, presumptive, ten-year prison terms.

¶3 Ramos appealed, raising the court's denial of his motion for new trial as the sole issue. We determined, however, that the trial court had lacked jurisdiction to address the motion because it had been untimely filed; we concluded there was "no valid trial court ruling . . . from which Ramos [could] appeal" and dismissed the appeal for lack of jurisdiction. *State v. Ramos*, No. 2 CA-CR 2008-0192 (memorandum decision filed Dec. 5, 2008). Ramos then filed a petition for post-conviction relief, asserting in part the trial court had abused its discretion in imposing presumptive prison terms because it had considered an improper aggravating circumstance or circumstances and had improperly weighed the aggravating and mitigating circumstances. The trial court summarily dismissed the petition, determining that it had properly considered and weighed the aggravating and mitigating circumstances before sentencing Ramos. This petition for review followed.

¶4 Ramos’s claim that the trial court abused its discretion in sentencing him to presumptive prison terms is precluded under Rule 32.2(a) because he could have raised it on direct appeal. *See* Ariz. R. Crim. P. 32.2(a)(1). Ramos has not alleged any of the exceptions to preclusion contained in Rule 32.2(b) apply to this case. Thus, although the trial court appears to have addressed this claim on its merits, we need not do so; because the claim was precluded, the trial court did not abuse its discretion in summarily denying post-conviction relief.

¶5 Although we grant Ramos’s petition for review, we deny relief.

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JOSEPH W. HOWARD, Chief Judge

CONCURRING:

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PHILIP G. ESPINOSA, Presiding Judge

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VIRGINIA C. KELLY, Judge